

1 Mark Hutchison (4639)
Jeffrey R. Hall (9572)
2 Chad Harrison (13888)
HUTCHISON & STEFFEN, PLLC
3 Peccole Professional Park
4 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
5 Phone (702) 385-2500
Fax (702) 385-2086
6 mhutchison@hutchlegal.com
7 jhall@hutchlegal.com
charrison@hutchlegal.com
8 *Attorneys for Defendants/Counterclaimants*

9 **UNITED STATES DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 V5 TECHNOLOGIES, LLC, d/b/a
12 COBALT DATA CENTERS,
Plaintiff,

13 v.

14 SWITCH, LTD., a Nevada limited company,
15 Defendant.

16
17 SWITCH, LTD., a Nevada limited company,
Counterclaimant,

18 v.

19
20 V5 TECHNOLOGIES, LLC, d/b/a
COBALT DATA CENTERS,
21 Counter-Defendant.

Case No.: 2:17-cv-02349-KJD-NJK

**SWITCH, LTD'S ANSWER TO
PLAINTIFF'S COMPLAINT AND
COUNTERCLAIM AGAINST V5
TECHNOLOGIES, LLC**

22 **SWITCH, LTD'S ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIM**
23 **AGAINST V5 TECHNOLOGIES, LLC**

24 Defendant Switch, Ltd., et al ("Switch") (all other Switch Defendants having been
25 dismissed since the filing of the Complaint), by and through its counsel of record, Hutchison &
26 Steffen, PLLC, answer Plaintiff V5 Technologies, LLC, d/b/a Cobalt Data Centers' ("Cobalt")
27 Complaint (the "Complaint"), and bring the following Counterclaims against Cobalt.
28

INTRODUCTION

1. Answering paragraph 1, Defendant admit the allegations contained in said paragraph.

2. Answering paragraph 2, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations

NATURE OF THE ACTION

3. Answering paragraph 3, Defendants deny the allegations contained in said paragraph.

4. Answering paragraph 4, Defendants deny the allegations contained in said paragraph.

5. Answering paragraph 5, Defendants deny the allegations contained in said paragraph.

6. Answering paragraph 6, Defendants deny the allegations contained in said paragraph.

7. Answering paragraph 7, Defendants deny the allegations contained in said paragraph.

8. Answering paragraph 8, Defendants deny the allegations contained in said paragraph.

THE PARTIES

9. Answering paragraph 9, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and, therefore, deny the allegations contained therein.

10. Answering paragraph 10, Defendants admit the allegations contained in said paragraph.

11. Answering paragraph 11, Defendant Switch Business Solutions, LLC has been dismissed from this lawsuit and, therefore, Defendants deny the allegations contained in said paragraph.

1 12. Answering paragraph 12, Defendant Switch Communications Group, LLC has
2 been dismissed from this lawsuit and, therefore, Defendants deny the allegations contained in said
3 paragraph.

4 13. Answering paragraph 13, Defendant Switch, Inc. has been dismissed from this
5 lawsuit and, therefore, Defendants admit the allegations contained in said paragraph.

6 **JURISDICTION, VENUE, AND INTERSTATE COMMERCE**

7 14. Answering paragraph 14, Defendants submit that said allegations call for a legal
8 conclusion and/or interpretation and said allegations are not capable of admission or denial.

9 15. Answering paragraph 15, Defendants submit that said allegations call for a legal
10 conclusion and/or interpretation and said allegations are not capable of admission or denial.

11 16. Answering paragraph 16, Defendants admit the allegations contained in said
12 paragraph.

13 17. Answering paragraph 17, Defendants submit that said allegations call for a legal
14 conclusion and/or interpretation and said allegations are not capable of admission or denial.

15 18. Answering paragraph 18, Defendants submit that said allegations call for a legal
16 conclusion and/or interpretation and said allegations are not capable of admission or denial.

17 **FACTUAL AND INDUSTRY BACKGROUND**

18 **A. Colocation Data Centers**

19 19. Answering paragraph 19, Defendants deny the allegations contained in said
20 paragraph.

21 20. Answering paragraph 20, Defendants deny the allegations contained in said
22 paragraph.

23 21. Answering paragraph 21, Defendants deny the allegations contained in said
24 paragraph.

25 22. Answering paragraph 22, Defendants deny the allegations contained in said
26 paragraph.

1 23. Answering paragraph 23, Defendants admit that “concurrent maintainability” is a
2 significant factor considered by customers in choosing a colocation data center provider.
3 Defendants deny the remaining allegations contained in said paragraph.

4 24. Answering paragraph 24, Defendants admit that “concurrent maintainability” is a
5 significant factor considered by customers in choosing a colocation data center provider.
6 Defendants deny the remaining allegations contained in said paragraph.

7 25. Answering paragraph 25, Defendants are without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
9 therefore, deny the allegations contained therein.

10 26. Answering paragraph 26, Defendants are without knowledge or information
11 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
12 therefore, deny the allegations contained therein.

13 27. Answering paragraph 27, Defendants are without knowledge or information
14 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
15 therefore, deny the allegations contained therein.

16 28. Answering paragraph 28, Defendants are without knowledge or information
17 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
18 therefore, deny the allegations contained therein.

19 29. In response to paragraph 29, Defendants are without knowledge or information
20 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
21 therefore, deny the allegations contained therein.

22 **B. Switch**

23 30. Answering paragraph 30, Defendants admit the allegations contained in said
24 paragraph.

25 31. Answering paragraph 31, Defendants deny the allegations contained in said
26 paragraph.
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1 **C. Cobalt**

2 32. Answering paragraph 32, Defendants deny the allegations contained in said
3 paragraph.

4 33. Answering paragraph 33, Defendants are without knowledge or information
5 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
6 therefore, deny the allegations contained therein.

7 34. Answering paragraph 34, Defendants deny the allegations contained in said
8 paragraph.

9 35. Answering paragraph 35, Defendants are without knowledge or information
10 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
11 therefore, deny the allegations contained therein.

12 36. Answering paragraph 36, Defendants are without knowledge or information
13 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
14 therefore, deny the allegations contained therein.

15 37. Answering paragraph 37, Defendants are without knowledge or information
16 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
17 therefore, deny the allegations contained therein.

18 38. Answering paragraph 38, Defendants deny the allegations contained in said
19 paragraph.

20 39. Answering paragraph 39, Defendants deny the allegations contained in said
21 paragraph.

22 40. Answering paragraph 40, Defendants deny the allegations contained in said
23 paragraph.

24 41. Answering paragraph 41, Defendants deny the allegations contained in said
25 paragraph.

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SWITCH’S TORTIOUS AND EXCLUSIONARY SCHEME

42. Answering paragraph 42, Defendants deny the allegations contained in said paragraph.

43. Answering paragraph 43, Defendants deny the allegations contained in said paragraph.

44. Answering paragraph 44, Defendants deny the allegations contained in said paragraph.

45. Answering paragraph 45, Defendants deny the allegations contained in said paragraph.

46. Answering paragraph 46, Defendants deny the allegations contained in said paragraph.

47. Answering paragraph 47, Defendants deny the allegations contained in said paragraph.

48. Answering paragraph 48, Defendants deny the allegation that Switch’s AUP had an “anticompetitive purpose” and submits that the document speaks for itself.

49. Answering paragraph 49, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and, therefore, deny the allegations contained therein.

50. Answering paragraph 50, Defendants submit that the referenced document speaks for itself. Defendants deny any allegations contained in said paragraph that are inconsistent with the referenced document.

51. Answering paragraph 51, Defendants submit that the referenced documents speak for themselves.

52. Answering paragraph 52, Defendants deny the allegations contained in said paragraph.

53. Answering paragraph 53, Defendants deny the allegations contained in said paragraph.

1 54. Answering paragraph 54, Defendants deny the allegations contained in said
2 paragraph.

3 55. Answering paragraph 55, Defendants are without knowledge or information
4 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
5 therefore, deny the allegations contained therein.

6 56. Answering paragraph 56, Defendants are without knowledge or information
7 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
8 therefore, deny the allegations contained therein.

9 57. Answering paragraph 57, Defendants are without knowledge or information
10 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
11 therefore, deny the allegations contained therein.

12 58. Answering paragraph 58, Defendants are without knowledge or information
13 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
14 therefore, deny the allegations contained therein.

15 59. Answering paragraph 59, Defendants are without knowledge or information
16 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
17 therefore, deny the allegations contained therein.

18 60. Answering paragraph 60, Defendants deny the allegations contained in said
19 paragraph.

20 61. Answering paragraph 61, Defendants deny the allegations contained in said
21 paragraph.

22 62. Answering paragraph 62, Defendants deny the allegations contained in said
23 paragraph.

24 63. Answering paragraph 63, Defendants are without knowledge or information
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
26 therefore, deny the allegations contained therein.
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1 64. Answering paragraph 64, Defendants deny the allegations contained in said
2 paragraph.
3 65. Answering paragraph 65, Defendants deny the allegations contained in said
4 paragraph.
5 66. Answering paragraph 66, Defendants deny the allegations contained in said
6 paragraph.
7 67. Answering paragraph 67, Defendants deny the allegations contained in said
8 paragraph.
9 68. Answering paragraph 68, Defendants deny the allegations contained in said
10 paragraph.
11 69. Answering paragraph 69, Defendants deny the allegations contained in said
12 paragraph.
13 70. Answering paragraph 70, Defendants deny the allegations contained in said
14 paragraph.
15 71. Answering paragraph 71, Defendants deny the allegations contained in said
16 paragraph.
17 72. Answering paragraph 72, Defendants deny the allegations contained in said
18 paragraph.
19 73. Answering paragraph 73, Defendants deny the allegations contained in said
20 paragraph.
21 74. Answering paragraph 74, Defendants deny the allegations contained in said
22 paragraph.
23 75. Answering paragraph 75, Defendants deny the allegations contained in said
24 paragraph.
25 76. Answering paragraph 76, Defendants deny the allegations contained in said
26 paragraph.
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1 77. Answering paragraph 77, Defendants deny the allegations contained in said
2 paragraph.

3 78. Answering paragraph 78, Defendants deny the allegations contained in said
4 paragraph.

5 79. Answering paragraph 79, Defendants deny the allegations contained in said
6 paragraph.

7 80. Answering paragraph 80, Defendants are without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
9 therefore, deny the allegations contained therein.

10 81. Answering paragraph 81, Defendants are without knowledge or information
11 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
12 therefore, deny the allegations contained therein.

13 82. Answering paragraph 82, Defendants are without knowledge or information
14 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
15 therefore, deny the allegations contained therein.

16 83. Answering paragraph 83, Defendants deny the allegations contained in said
17 paragraph.

18 84. Answering paragraph 84, Defendants deny the allegations contained in said
19 paragraph.

20 85. Answering paragraph 85, Defendants deny the allegations contained in said
21 paragraph.

22 86. Answering paragraph 86, Defendants deny the allegations contained in said
23 paragraph.

24 87. Answering paragraph 87, Defendants admit the allegations contained in said
25 paragraph, but deny that the alleged behavior was a “pretext.”

26 88. Answering paragraph 88, Defendants deny the allegations contained in said
27 paragraph.
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1 89. Answering paragraph 89, Defendants deny the allegations contained in said
2 paragraph.

3 90. Answering paragraph 90, Defendants deny the allegations contained in said
4 paragraph.

5 91. Answering paragraph 91, Defendants deny the allegations contained in said
6 paragraph.

7 92. Answering paragraph 92, Defendants deny the allegations contained in said
8 paragraph.

9 93. Answering paragraph 93, Defendants deny the allegations contained in said
10 paragraph.

11 **THE RELEVANT MARKET**

12 94. Answering paragraph 94, Defendants deny the allegations contained in said
13 paragraph.

14 **A. Colocation Data Centers**

15 95. Answering paragraph 95, Defendants deny the allegations contained in said
16 paragraph.

17 96. Answering paragraph 96, Defendants are without knowledge or information
18 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
19 therefore, deny the allegations contained therein.

20 97. Answering paragraph 97, Defendants are without knowledge or information
21 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
22 therefore, deny the allegations contained therein.

23 98. Answering paragraph 98, Defendants are without knowledge or information
24 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
25 therefore, deny the allegations contained therein.

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1 99. Answering paragraph 99, Defendants are without knowledge or information
2 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
3 therefore, deny the allegations contained therein.

4 100. Answering paragraph 100, Defendants are without knowledge or information
5 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
6 therefore, deny the allegations contained therein.

7 101. Answering paragraph 101, Defendants are without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
9 therefore, deny the allegations contained therein.

10 102. Answering paragraph 102, Defendants are without knowledge or information
11 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
12 therefore, deny the allegations contained therein.

13 103. Answering paragraph 103, Defendants deny the allegations contained in said
14 paragraph.

15 104. Answering paragraph 104, Defendants deny the allegations contained in said
16 paragraph.

17 105. Answering paragraph 105, Defendants are without knowledge or information
18 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
19 therefore, deny the allegations contained therein.

20 **B. The Relevant Geographic Market: Las Vegas Metropolitan Area**

21 106. Answering paragraph 106, Defendants deny the allegations contained in said
22 paragraph.

23 107. Answering paragraph 107, Defendants deny the allegations contained in said
24 paragraph.

25 108. Answering paragraph 108, Defendants deny the allegations contained in said
26 paragraph.

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1 109. Answering paragraph 109, Defendants deny the allegations contained in said
2 paragraph.

3 110. Answering paragraph 110, Defendants admit the allegations contained in said
4 paragraph.

5 111. Answering paragraph 111, Defendants admit that the “U.S. Safety Zone”
6 designation regarding Las Vegas helps make it an attractive location for a data center, but denies
7 all other allegations contained in said paragraph.

8 112. Answering paragraph 112, Defendants admit that Las Vegas is well-suited as a
9 location for colocation data center services for many reasons including some of those alleged in
10 this paragraph. However, Defendants deny that colocation data centers in Las Vegas are so
11 uniquely situated that they do not compete with colocation data centers located throughout the
12 Southwest, the United States, and globally.

13 113. Answering paragraph 113, Defendants are without knowledge or information
14 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
15 therefore, deny the allegations contained therein.

16 114. Answering paragraph 114, Defendants deny the allegations contained in said
17 paragraph.

18 115. Answering paragraph 115, Defendants deny the allegations contained in said
19 paragraph.

20 116. Answering paragraph 116, Defendants deny the allegations contained in said
21 paragraph.

22 117. Answering paragraph 117, Defendants deny the allegations contained in said
23 paragraph.

24 118. Answering paragraph 118, Defendants deny the allegations contained in said
25 paragraph.

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1 119. Answering paragraph 119, Defendants are without knowledge or information
2 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
3 therefore, deny the allegations contained therein.

4 120. Answering paragraph 120, Defendants deny the allegations contained in said
5 paragraph.

6 **C. Relevant Marketplace Participants**

7 121. Answering paragraph 121, Defendants deny the allegations contained in said
8 paragraph.

9 122. Answering paragraph 122, Defendants deny the allegations contained in said
10 paragraph.

11 123. Answering paragraph 123, Defendants deny the allegations contained in said
12 paragraph.

13 124. Answering paragraph 124, Defendants deny the allegations contained in said
14 paragraph.

15 **SWITCH'S MONOPOLY POWER**

16 125. Answering paragraph 125, Defendants deny the allegations contained in said
17 paragraph.

18 126. Answering paragraph 126, Defendants deny the allegations contained in said
19 paragraph.

20 127. Answering paragraph 127, Defendants deny the allegations contained in said
21 paragraph.

22 128. Answering paragraph 128, Defendants deny the allegations contained in said
23 paragraph.

24 129. Answering paragraph 129, Defendants are without knowledge or information
25 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
26 therefore, deny the allegations contained therein.
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1 130. Answering paragraph 130, Defendants deny the allegations contained in said
2 paragraph.

3 131. Answering paragraph 131, Defendants deny the allegations contained in said
4 paragraph.

5 132. Answering paragraph 132, Defendants deny the allegations contained in said
6 paragraph.

7 133. Answering paragraph 133, Defendants deny the allegations contained in said
8 paragraph.

9 134. Answering paragraph 134, Defendants deny the allegations contained in said
10 paragraph.

11 **SWITCH'S ANTICOMPETITIVE CONDUCT HAS STIFLED COMPETITION IN THE**
12 **RELEVANT MARKET, THEREBY EXTENDING SWITCH'S MONOPOLY POWER**
13 **AND INJURING CONSUMERS AND COMPETITORS**

14 135. Answering paragraph 135, Defendants deny the allegations contained in said
15 paragraph.

16 136. Answering paragraph 136, Defendants deny the allegations contained in said
17 paragraph.

18 137. Answering paragraph 137, Defendants deny the allegations contained in said
19 paragraph.

20 138. Answering paragraph 138, Defendants deny the allegations contained in said
21 paragraph.

22 139. Answering paragraph 139, Defendants deny the allegations contained in said
23 paragraph.

24 140. Answering paragraph 140, Defendants deny the allegations contained in said
25 paragraph.

26 141. Answering paragraph 141, Defendants deny the allegations contained in said
27 paragraph.

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1 142. Answering paragraph 142, Defendants deny the allegations contained in said
2 paragraph.

3 143. Answering paragraph 143, Defendants deny the allegations contained in said
4 paragraph.

5 144. Answering paragraph 144, Defendants admit the allegations contained in said
6 paragraph.

7 145. Answering paragraph 145, Defendants are without knowledge or information
8 sufficient to form a belief as to the truth of the allegations contained in said paragraph and,
9 therefore, deny the allegations contained therein.

10 146. Answering paragraph 146, Defendants deny the allegations contained in said
11 paragraph.

12 **FIRST CLAIM FOR RELIEF**
13 **(Violation of 15 U.S.C § 2 - Monopolization)**

14 147. In response to paragraph 147, Defendants repeat and reallege their responses to
15 the allegations contained in paragraphs 1 through 146 of Plaintiff's complaint and incorporate the
16 same as if set forth in full.

17 148. Answering paragraph 148, Defendants deny the allegations contained in said
18 paragraph.

19 149. Answering paragraph 149, Defendants deny the allegations contained in said
20 paragraph.

21 150. Answering paragraph 150, Defendants deny the allegations contained in said
22 paragraph.

23 151. Answering paragraph 151, Defendants deny the allegations contained in said
24 paragraph.

25 152. Answering paragraph 152, Defendants deny the allegations contained in said
26 paragraph.

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1 153. Answering paragraph 153, Defendants deny the allegations contained in said
2 paragraph.

3 154. Answering paragraph 154, Defendants deny the allegations contained in said
4 paragraph.

5 **SECOND CLAIM FOR RELIEF**
6 **(Violation of 15 U.S.C § 2 – Attempted Monopolization)**

7 155. In response to paragraph 155, Defendants repeat and reallege their responses to
8 the allegations contained in paragraphs 1 through 154 of Plaintiff’s complaint and incorporate the
9 same as if set forth in full.

10 156. Answering paragraph 156, Defendants deny the allegations contained in said
11 paragraph.

12 157. Answering paragraph 157, Defendants deny the allegations contained in said
13 paragraph.

14 158. Answering paragraph 158, Defendants deny the allegations contained in said
15 paragraph.

16 159. Answering paragraph 159, Defendants deny the allegations contained in said
17 paragraph.

18 160. Answering paragraph 160, Defendants deny the allegations contained in said
19 paragraph.

20 161. Answering paragraph 161, Defendants deny the allegations contained in said
21 paragraph.

22 162. Answering paragraph 162, Defendants deny the allegations contained in said
23 paragraph.

24 163. Answering paragraph 163, Defendants deny the allegations contained in said
25 paragraph.

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THIRD CLAIM FOR RELIEF
(Violation of 15 U.S.C § 1 – Agreements in Restraint of Trade)

164. In response to paragraph 164, Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 163 of Plaintiff's complaint and incorporate the same as if set forth in full.

165. Answering paragraph 165, Defendants deny the allegations contained in said paragraph.

166. Answering paragraph 166, Defendants deny the allegations contained in said paragraph.

167. Answering paragraph 167, Defendants deny the allegations contained in said paragraph.

168. Answering paragraph 168, Defendants deny the allegations contained in said paragraph.

169. Answering paragraph 169, Defendants deny the allegations contained in said paragraph.

170. Answering paragraph 170, Defendants deny the allegations contained in said paragraph.

171. Answering paragraph 171, Defendants deny the allegations contained in said paragraph.

FOURTH CLAIM FOR RELIEF
(Violation of Nev. Rev. Stat. § 598A.060 - Monopolization)

172. In response to paragraph 172, Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 171 of Plaintiff's complaint and incorporate the same as if set forth in full.

173. Answering paragraph 173, Defendants deny the allegations contained in said paragraph.

1 174. Answering paragraph 174, Defendants deny the allegations contained in said
2 paragraph.

3 175. Answering paragraph 175, Defendants deny the allegations contained in said
4 paragraph.

5 176. Answering paragraph 176, Defendants deny the allegations contained in said
6 paragraph.

7 177. Answering paragraph 177, Defendants deny the allegations contained in said
8 paragraph.

9 178. Answering paragraph 178, Defendants deny the allegations contained in said
10 paragraph.

11 179. Answering paragraph 179, Defendants deny the allegations contained in said
12 paragraph.

13 **FIFTH CLAIM FOR RELIEF**
14 **(Violation of Nev. Rev. Stat. § 598A.060 – Attempted Monopolization)**

15 180. In response to paragraph 180, Defendants repeat and reallege their responses to
16 the allegations contained in paragraphs 1 through 179 of Plaintiff's complaint and incorporate the
17 same as if set forth in full.

18 181. Answering paragraph 181, Defendants deny the allegations contained in said
19 paragraph.

20 182. Answering paragraph 182, Defendants deny the allegations contained in said
21 paragraph.

22 183. Answering paragraph 183, Defendants deny the allegations contained in said
23 paragraph.

24 184. Answering paragraph 184, Defendants deny the allegations contained in said
25 paragraph.

26 185. Answering paragraph 185, Defendants deny the allegations contained in said
27 paragraph.
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1 186. Answering paragraph 186, Defendants deny the allegations contained in said
2 paragraph.

3 187. Answering paragraph 187, Defendants deny the allegations contained in said
4 paragraph.

5 188. Answering paragraph 188, Defendants deny the allegations contained in said
6 paragraph.

7 **SIXTH CLAIM FOR RELIEF**
8 **(Violation of Nev. Rev. Stat. § 598A.060 – Agreements in Restraint of Trade)**

9 189. In response to paragraph 189, Defendants repeat and reallege their responses to
10 the allegations contained in paragraphs 1 through 188 of Plaintiff's complaint and incorporate the
11 same as if set forth in full.

12 190. Answering paragraph 190, Defendants deny the allegations contained in said
13 paragraph.

14 191. Answering paragraph 191, Defendants deny the allegations contained in said
15 paragraph.

16 192. Answering paragraph 192, Defendants deny the allegations contained in said
17 paragraph.

18 193. Answering paragraph 193, Defendants deny the allegations contained in said
19 paragraph.

20 194. Answering paragraph 194, Defendants deny the allegations contained in said
21 paragraph.

22 195. Answering paragraph 195, Defendants deny the allegations contained in said
23 paragraph.

24 196. Answering paragraph 196, Defendants deny the allegations contained in said
25 paragraph.

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197. In response to paragraph 197, Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 196 of Plaintiff's complaint and incorporate the same as if set forth in full.

198. Answering paragraph 198, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph and, therefore, deny the allegations contained therein.

199. Answering paragraph 199, Defendants deny the allegations contained in said paragraph.

200. Answering paragraph 200, Defendants deny the allegations contained in said paragraph.

201. Answering paragraph 201, Defendants deny the allegations contained in said paragraph.

202. Answering paragraph 202, Defendants deny the allegations contained in said paragraph.

203. Answering paragraph 203, Defendants deny the allegations contained in said paragraph.

204. Answering paragraph 204, Defendants deny the allegations contained in said paragraph.

205. In response to paragraph 205, Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 204 of Plaintiff's complaint and incorporate the same as if set forth in full.

///

211. Answering paragraph 210 Defendants deny the allegations contained in said paragraph.

Defendants generally deny each and every allegation set forth in Plaintiff's complaint not specifically admitted herein. Defendants further generally deny that Plaintiff has sustained any injury, damage, or loss by reason of any act or omission on the part of Defendants. In addition, without admitting any allegations contained in the Complaint, Defendants assert the following Affirmative Defenses based on information and belief.

FIRST AFFIRMATIVE DEFENSE

///

1 **SECOND AFFIRMATIVE DEFENSE**

2 To the extent that Plaintiff was competing in the same market as Defendant, Defendant
3 was engaged in normal and justifiable business competition with Plaintiff, and did not engage in
4 any anti-competitive behavior. At all times, Defendant had legitimate business and
5 procompetitive justifications for its conduct.

6 **THIRD AFFIRMATIVE DEFENSE**

7 Plaintiff has failed to mitigate its damages, if any.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 The complaint, and each cause of action, must fail against Defendants because they
10 fulfilled their duties as provided by law.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Any harm suffered by Plaintiff was not caused by any conduct on the part of Defendants.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 All damages alleged by Plaintiff are speculative, and therefore unrecoverable.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 Plaintiff failed to plead each of the causes of action alleged in the complaint with the
17 necessary elements and particularity required by law.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 Defendants allege that the damages, if any, were caused in whole or in part, or were
20 contributed to by Plaintiff's and/or another third-party's wrongful conduct and/or negligence.

21 **NINTH AFFIRMATIVE DEFENSE**

22 Plaintiff is not entitled to attorney fees or costs.

23 **TENTH AFFIRMATIVE DEFENSE**

24 Plaintiff was not damaged by any actions of Defendants.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 Plaintiff fails to state a claim upon which exemplary/punitive damages may be awarded.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 It has been necessary for Defendants to employ the services of an attorney to defend this
3 action and a reasonable sum should be allowed Defendants as and for attorney fees, together with
4 its costs expended in defending this action.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 No claims for punitive damages or other non-compensatory damages are appropriate
7 against Defendants. Because of the possibility of treble damages, plaintiff is not also entitled to
8 punitive damages.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff breached a contractual relationship among the parties, which breach excuses any
11 failure to perform on the part of Defendants.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiff's alleged damages are duplicative of other claims.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 Plaintiff lacks antitrust standing.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's alleged injury is too remote.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 Plaintiff's own unclean hands bars it from recovery.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred by the governing statutes of limitations.

22 **TWENTIETH AFFIRMATIVE DEFENSE**

23 Defendant had immunity for its actions pursuant to the *Noerr-Pennington* doctrine.

24 **TWENTY FIRST AFFIRMATIVE DEFENSE**

25 Defendants hereby incorporates by reference those affirmative defenses enumerated in
26 Rule 8 of the Federal Rules of Civil Procedure as if fully set forth herein. In the event further
27 investigation or discovery reveals the applicability of any such defenses, Defendants reserves the
28

1 right to seek leave of court to amend this answer to specifically assert any such defense. Such
2 defenses are herein incorporated by reference for the specific purpose of not waiving any such
3 defense.

4 **PRAYER FOR RELIEF**

- 5 1. That the Court enter judgment in favor of Defendants;
6 2. That Plaintiff takes nothing by its Complaint;
7 3. That the Court award Defendants their costs and attorney fees incurred in
8 connection with this action; and
9 4. For such other and further relief as the Court deems just and proper.

10 DATED this 12th day of October, 2018.

11
12 HUTCHISON & STEFFEN, LLC

13 */s/ Jeffrey R. Hall*

14 _____
15 Mark Hutchison (4639)
16 Jeffrey R. Hall (9572)
17 Chad Harrison (13888)
18 Peccole Professional Park
19 10080 West Alta Drive, Suite 200
20 Las Vegas, Nevada 89145
21 Phone (702) 385-2500
22 Fax (702) 385-2086
23 mhutchison@hutchlegal.com
24 jhall@hutchlegal.com
25 charrison@hutchlegal.com

26 *Attorneys for Defendants/Counterclaimants*
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COUNTERCLAIM

Defendant and Counterclaimant Switch, Ltd. (“Switch”), by and through its counsel of record, Hutchison & Steffen, PLLC, hereby complains and alleges against Counter-Defendant V5 Technologies, LLC, d/b/a Cobalt Data Centers’ (“Cobalt”) as follows:

PARTIES AND JURISDICTION

1. Counterclaimant Switch is a limited liability company organized and existing under the laws of the state of Nevada with its headquarters and principal place of business in Las Vegas, Nevada.

2. Counter-Defendant Cobalt is a limited liability company organized and existing under the laws of the state of Nevada. Cobalt’s headquarters and principal place of business are located in Las Vegas, Nevada.

GENERAL ALLEGATIONS

1. Switch opened its doors in Las Vegas in early 2000, with the mission of building state of the art data centers that power, cool, and connect the global internet, for customers worldwide.

2. At its core, Switch is the infrastructure heart of the internet. Switch provides the physical buildings, cooling, power, and networks that support the internet of everything, for customers ranging from Google, Amazon, Intel, Google, and Disney, to banks, hospitals and governments.

3. Switch’s founder, Rob Roy, saw the future need to connect, power, cool and protect the computers, servers, and networks, that make up the digital world. To that end, Mr. Roy has secured over 550 patent and patent pending claims around Switch’s technologies.

4. His intent was to provide the building, cooling, power, bandwidth and physical security to customers to house their data servers; without a customer ever experiencing a loss of power, cooling, or connectivity known as “downtime”.

5. A moment of downtime can result in a complete loss of services for days or even weeks. This downtime can cause significant loss of revenue and damage to a customer brand.

1 Accordingly, Mr. Roy's designs and trade secrets have ensured that Switch's data centers have
2 not had a moment of "downtime" since its inception.

3 6. In other words, Switch has never lost power, cooling, connectivity or physical
4 security, even if the local power company has lost power.

5 7. Given this reputation, and Mr. Roy's innovative technologies, Switch has evolved
6 into a global industry leader and created a technology infrastructure ecosystem made up of the
7 most advanced data centers and most powerful technologies, with some of the world's largest
8 businesses.

9 8. Additionally, Switch's innovative technologies have allowed Switch to build and
10 operate their data centers more reliably and at dramatically more cost-efficient margins than their
11 competitors.

12 9. Independent third parties have validated Switch's unique global position.

13 10. Switch's facilities have been ranked above those of Google, Apple, Facebook,
14 Microsoft and others.

15 11. Additionally, Switch has received various awards for its campus, sustainability,
16 and cloud offerings, ahead of industry leaders like Apple, Facebook, Google, Equinix, and others.

17 12. Moreover, the Uptime Institute, a recognized authority on certifying data center
18 facilities worldwide for design, construction, management, and operations has found Switch
19 meets and exceeds its "Uptime" standards for constant power and cooling of internet technology.

20 13. The Uptime Institute has certified Switch's Las Vegas facilities as Tier IV Gold,
21 the highest rating attainable from Uptime, twice. No other colocation data center provider in the
22 world has done so.

23 14. The Uptime Institute's ratings are based largely on concurrent maintainability –
24 meaning that Switch's facilities have no single points of failure. Further, Switch's facilities are
25 fully functional even when planned maintenance or upgrades of their systems are happening.

26 15. Switch contractually guarantees its clients will experience continuous uptime and
27 backs that promise with a stringent service level agreement and money back guarantee.
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1 16. Taking their commitment to resiliency and sustainability even further, and
2 desirous to provide even more transparency into the superiority of its technologies, Switch
3 developed a new standard above and beyond the Uptime Standards, creating the “Tier 5 Platinum”
4 standards. Tier 5 Platinum incorporates additional standards regarding energy sustainability,
5 physical security, telecommunication interconnectivity, physical facility, and locational safety, as
6 well as Uptime’s power and cooling standards. Switch’s Tier 5 Platinum standard is available at
7 www.switch.com/tier-5.

8 17. Currently, Switch operates colocation facilities in Las Vegas, Reno, and Grand
9 Rapids, Michigan. It is also constructing a hyper-scale facility in Atlanta, Georgia.

10 18. Switch’s Las Vegas campus, consists of over 2.3 million square feet of capacity
11 making it among the largest data center campuses (if not the single largest data centers) in the
12 world¹.

13 19. Switch’s Grand Rapids campus has almost 700,000 square feet of capacity and
14 will have almost 2 million square feet once fully built out.

15 20. Switch’s Reno campus has 1.4 million square feet of capacity and will have nearly
16 7 million square feet of capacity; making Switch’s Reno campus even larger than the Las Vegas
17 campus, and current largest data center campus in the world.

18 21. At these facilities, Switch provides its customers unparalleled resiliency and
19 continuous uptime as well as innovative solutions allowing customers to efficiently and securely
20 store their data with worldwide connectivity.

21 **The Global Data Center Market**

22 22. The data center industry is an extremely competitive, world-wide market
23 comprised of numerous businesses vying for market share. Only a few large competitors have
24 more than a 5% share of the market, including Equinix, Digital Realty, NTT Data, Century Link
25 (Cyxtera), Cyrus One, and a few others. Switch does not.

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28 ¹ <https://www.cbronline.com/data-centre/top-10-biggest-data-centres-from-around-the-world-4545356/>

1 23. Equinix, the market leader, maintains over 180 data centers in more than 44
2 metropolitan areas and has the largest global market share.

3 24. During the times that Cobalt was a competitor in the national and global colocation
4 data center market, Cobalt acknowledged it was not a competitor with Switch because Switch's
5 facilities were demonstrably superior to Cobalt's.

6 25. Switch had and has numerous certifications in addition to the Tier IV Gold
7 certification provided by Uptime, and won numerous awards.

8 26. Cobalt, on the other hand, had no "tier" certifications.

9 27. By Cobalt's own admissions, Cobalt and Switch were *not* competitors.

10 28. Yet, Cobalt's Complaint attempts to define the relevant geographic market as
11 being the limited Las Vegas Metropolitan Area. This is self-servingly myopic. The colocation
12 data center market is a national and global market. Moreover, given the national and global scale
13 of the data center market, but for Switch's presence in the Las Vegas Metropolitan Area, Vegas
14 would not be a relevant geographic market in this space.

15 29. By its very nature, the colocation data center market is global. The colocation
16 market initially grew to support businesses reliance on the world wide web. A data center is
17 designed to support customers' servers and data with world-wide inter-connection and access to
18 hard drives and clouds.

19 30. Suggesting the market for data centers is geographically specific is like defining a
20 mass media market by where companies headquarter their production studios. Although movies
21 may be made in Hollywood the relevant market for movie studios is global. Data centers, the
22 infrastructure backbones that power such mass communication, are no less globally minded. This
23 is why Switch has customers from all over the nation and all over the world.

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1 **Customer Choice**

2 31. Data Center customers choose data centers to serve various needs. However, all
3 customers have one goal, interconnectivity with the world-wide web. Suggesting that data center
4 customers only want their data in the data center's broader metropolitan area is illogical to the
5 purpose of a data center. The internet allows data to be transported anywhere in the world almost
6 instantaneously. Its utility is that it knows no geographic boundaries.

7 32. Therefore, a potential Switch customer is not relegated to choosing Las Vegas as
8 its sole choice to house its data, whether that customer is located in Las Vegas or anywhere else.
9 Rather, a potential Switch customer must decide that the services provided by Switch in Las
10 Vegas are demonstrably preferable to those provided by dozens if not hundreds of competing
11 colocation data centers located all over the nation, and the world.

12 33. More important than geographic location, data center customers, consider the
13 quality and cost of services, internet connectivity, security, and the energy sustainability of
14 operations to name a few, as compared to the offerings provided by Switch's competitors.

15 34. Accordingly, Switch promotes its status as the leading technology company in
16 various verticals. Switch has the world's only Tier 5 Platinum data centers. Switch has the most
17 robust telecommunications offerings in the United States, if not the world. Switch is the most
18 "green" (aka sustainable) technology company according to Green Peace's 2017 Clicking Clean
19 report. Switch offers the most robust physical security with armed guards. Moreover, Switch
20 notes that because of its scale, it can offer these services at the cost of otherwise inferior and
21 incomparable data centers.

22 35. Switch does this because when a company located in Southern California is
23 looking for a data center, they have hundreds of options to choose from, including data centers in
24 Southern California and outside of Southern California, Arizona, Oregon, Utah, and Nevada,
25 Texas, Virginia, and elsewhere. Nothing requires a company to collocate its data in its own
26 geographic region or anywhere else for that matter. A company could consider a multitude of
27 data storage centers from any number of geographic locations throughout the United States and
28

1 globally. This is why companies often pick multiple geographically diverse locations for disaster
2 recovery purposes.

3 36. In fact, it is mostly due to Switch's own efforts that Nevada is even a part of the
4 world-wide market for data centers. Without material changes to Nevada's infrastructure, tax,
5 regulatory, and energy policies, (championed and paid for by Switch) data centers would not be
6 able to participate in the world-wide marketplace or compete with national and international
7 companies.

8 37. Switch spearheaded necessary changes to Nevada economic incentives, as well as
9 tax and energy laws, which benefited all Nevada data centers including Cobalt, and ViaWest and
10 allowed Nevada to now compete with the rest of the world for data center business.

11 38. Cobalt acknowledge that Switch and Cobalt are not competitors. Cobalt's CEO,
12 Jefferson Brown, stated that Cobalt competed with colocation data centers in locations such as
13 California or Phoenix. In an article for Vegas Seven on July 15, 2014, Brown stated:

14 "Rather than placing critical infrastructure in Silicon Valley, which has expensive
15 real estate, expensive power and is very close to all those companies like Facebook
16 and Disney, let's get that into a [more economic friendly] environment where there
17 is low risk of natural disasters like earthquakes. We have a little marketing slogan:
"Get your critical infrastructure off the fault line once and for all." "Bring it out
of California, but you don't have to go all the way to Dallas."

18 39. Brown went on to state that places like Las Vegas, Salt Lake City and Phoenix
19 have become more attractive for placing critical infrastructure to go serve that big economy in
20 California; not just Las Vegas.

21 40. Brown further stated that if Cobalt was competing for business and the customer
22 looked to Phoenix or Las Vegas, sometimes they would pick Phoenix because of the negative
23 perception of Las Vegas.

24 41. Brown admits that the colocation service providers in these markets are competing
25 for the same customers in California and Phoenix, at a minimum, which directly contradicts
26 Cobalt's contention that organizations looking to put their critical computing infrastructure in the
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1 Las Vegas market do not consider data centers outside of the Las Vegas market to be reasonably
2 interchangeable.

3 42. Even today, Switch must convince a customer that the service it provides is
4 superior *and* at an competitive cost when compared to the offerings of competitors nationally,
5 including competing data centers in Las Vegas like ViaWest (aka Flexential), and competitors in
6 the surrounding United States. Las Vegas is simply once city in a broad array of cities in a
7 national market for colocation services.

8 43. For example, Equinix, the company with the largest national and global data center
9 market share, has five different data centers in the Los Angeles area, seventeen data centers in the
10 Silicon Valley area, two data centers in the Denver area and three data centers in the Seattle area,
11 just to name a few of their locations in the Western United States.

12 44. If Switch is to attract new customers to its Las Vegas facilities, it unquestionably
13 competes with Equinix's numerous data centers, including those mentioned above. In order to
14 obtain a potential customer's business, Switch competes with Equinix and a host of other data
15 center service providers from all over. To gain competitive advantage, Switch must differentiate
16 itself. Switch must rely on its patented technology, superior services, quality of facilities,
17 sustainability policies, robust connectivity, and lower cost offerings to attract customers.

18 45. Yet, even as an innovator and leader in providing colocation services, Switch's
19 profit margins have continuously decreased as the nation-wide and world-wide market has grown
20 more competitive. These trends existed long before Cobalt started and continue to exist after
21 Cobalt went out of business. The simple fact is that the competition for customers in the data
22 storage space is fierce across geographic lines, all to the benefit of consumers.

23 46. Cobalt references a blog from Sean Tario in its Complaint that discusses Cobalt's
24 Cheyenne facility, but also discusses Switch. In reference to Switch, Tario states:

25 SwitchNAP was most definitely impressive and lived up to the hype... though I
26 was disappointed not seeing the remote activated turret guns I know someone
27 mentioned to me over the past few years... To sum up the security they have in
28 place, I'll just say the liability insurance these guys must pay to have so many
armed guards must be ridiculous. Richard Weltmer toured us through the facility

1 like a pro, clearly having performed this tour over 100 times. Redundancy was
2 solid across the board, high density was no issue, lots of room for growth, smart
3 hands available if/as needed... long story short, if I needed to be in Las Vegas, had
4 the money to pay the premium for space and power, or simply had massive
network needs to offset this premium (as network in/out of their facility can get
extremely inexpensive as one scales), I wouldn't hesitate deploying my production
environment in SwitchNAP.

5 47. With regard to Cobalt, Tario stated:

6 Cobalt was a solid N+1 facility for a client not needing the sexy factor of
7 SwitchNAP.

8 48. Indeed, on or about April 17, 2014, Cobalt representative David Mayne,
9 specifically denied being a direct competitor with Switch. In inviting Switch customer, Michael
10 Walsh of the Las Vegas Global Economic Alliance, to tour Cobalt, Mayne said that comparing
11 Switch and Cobalt is "like comparing the ocean to a lake. Sure both have water, but they are very
12 different ecosystems and attract different clients. Do we compete? Actually, it is rare, but on
13 occasion. We are not built for the Disney's and Ebay's."

14 49. In sum, Switch's offerings are in an entirely different class; undeniably superior
15 to what Cobalt offered to customers.

16 **The Long and Contentious History Between Cobalt and Switch**

17 50. In late 2003, Michael Ballard (who would later become the founder of Cobalt Data
18 Centers) was hired to perform marketing services for Switch.

19 51. Ballard worked for Switch serving in various capacities for approximately two
20 years, including acting CFO, until he was terminated for cause in or around April of 2006. In
21 early 2008, Ballard hired Switch's former contractors and engineers to open a competing data
22 center across the street from Switch in Las Vegas. Switch then learned that Ballard had illegally
23 retained hard drives and copied confidential proprietary information he obtained prior to his
24 termination, including construction plans, trade secrets, designs, and customer lists.

25 52. Cobalt then hired referral agents and vendors to attempt to obtain more of Switch's
26 confidential information including current prices. Ballard falsely referred to himself as a
27 "founder" of Switch to raise funds and promote Cobalt. Ballard also sent the current financial
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1 backer of Cobalt, John Ritter, to attempt to gather data about Switch from Switch's board
2 members under false pretenses.

3 53. Switch sued Cobalt in February of 2011. During the course of discovery, it was
4 revealed that Cobalt had conspired to systematically misappropriate Switch's intellectual property
5 through corporate espionage and various falsehoods. It became clear that Cobalt had been
6 engaged in open and brazen attempts to steal Switch's intellectual property, including patent
7 pending trade secrets and designs.

8 54. In addition to litigation, Switch took additional measures to defend itself against
9 Cobalt's efforts to use potential customers, vendors, and brokers to obtain more of Switch's
10 confidential and patent pending information. For example, Switch included defensive language
11 in its Acceptable Use Policy ("AUP") which governs activity of those entering, using, or serving
12 Switch's data centers to protect itself from Cobalt. Specifically, Switch's AUP prohibited those
13 exposed to or benefiting Switch's data center technologies from doing business with Switch *and*
14 Cobalt, to prevent future abuse, misappropriation, espionage, or unlawful competition, given the
15 ongoing lawsuit.

16 55. After years of discovery, motions to compel Cobalt to produce the Switch
17 materials Ballard took prior to his termination, and extensive confidential settlement negotiations,
18 Michael Ballard, John Ritter, Cobalt, and V5 Technologies all settled with Switch. The
19 signatories also publicly acknowledged Switch's suit was legitimate. Switch agreed to a nominal
20 settlement which was donated to a charity, in exchange for Ballard and Cobalt publicly confessing
21 their unlawful acts.

22 56. Accordingly, in 2013, Cobalt, Ballard, and V5 Technologies publicly
23 acknowledged the validity of Switch's lawsuit and admitted in the public settlement agreement
24 that Ballard had breached his agreements with Switch, misrepresented his role as a Switch
25 "founder", and retained Switch's intellectual property and confidential information all to
26 unlawfully compete with Switch.

1 57. Cobalt also released all alleged claims raised against Switch during the course of
2 the suit, including past, present, and future claims of anti-trust or monopoly.

3 58. In the years following the initial misappropriation, Switch has acted to prevent
4 Cobalt and its principals from using deceitful tactics to obtain confidential and proprietary
5 information from Switch. That includes ensuring Switch only uses vendors who do not work with
6 Cobalt and will work exclusively with Switch. Switch has every right to engage those vendors it
7 prefers and who will operate in an acceptable manner.

8 **The Suspicious and Harmful Timing of Cobalt's Lawsuit**

9 59. Switch made its initial public offering ("IPO") on the New York Stock Exchange
10 in November of 2017. Immediately prior to this IPO, on September 7, 2017, Cobalt filed a lawsuit
11 against Switch making the very claims that Cobalt had released as part of the prior settlement
12 agreement.

13 60. Cobalt also referred to information that it had agreed not to disclose as part of the
14 confidentiality agreements.

15 61. Finally, Cobalt made several references to a "Las Vegas market" in which Switch
16 and Cobalt were competing as colocation data centers.

17 62. Upon information and belief, Cobalt's purpose in bringing the lawsuit at the time
18 it did was to leverage Switch's upcoming IPO in order to secure a nuisance settlement.

19 63. Upon information and belief, Cobalt also brought this lawsuit for the following
20 improper and ulterior purposes:

- 21 a. To gain access to trade secrets, confidential business strategy, and other valuable
22 assets and property of Switch that Cobalt (or its owners) hopes to use to harm
23 Switch in future endeavors.
- 24 b. To cause discord between Switch and its many vendors and customers at the
25 critical time of Switch going public.
- 26 c. To use the litigation privilege to shield libelous, defamatory, and disparaging
27 statements.

1 d. To negatively affect Switch's stock price.

2 e. To attempt to escape the terms of the Settlement Agreement signed by Cobalt.

3 f. To burden Switch with incredibly expensive and burdensome discovery that has
4 little to do with the merits of the litigation; knowing that given Cobalt's and
5 Ritter's ongoing bankruptcies, Switch has little chance of recouping its costs even
6 if it prevails on all claims.

7 64. On information and belief, John Ritter prepared and encouraged Cobalt's failure
8 and the resulting litigation against Switch as a means to satisfy his own personal creditors in his
9 own personal bankruptcy, with the hope and representation that Switch would settle quickly,
10 giving him funds that he could transfer to his many creditors.

11 **FIRST CLAIM FOR RELIEF**
12 **Breach of Settlement Agreement**

13 65. Switch repeats and realleges each and every allegation contained in paragraphs 1
14 through this number of the counterclaim with the same force and effect as if set forth herein.

15 66. The parties entered into a valid contract on March 8, 2013 in which Cobalt agreed
16 to release "any and all claims, causes of action, disputes and damages, including, but not limited
17 to claims of abuse of process, unfair competition, antitrust, defamation, or tortious interference
18 against Switch, in exchange for Switch settling and release its claims against David Michael
19 Ballard in Case No.: 2:11-cv-00285-JCM-GWF."

20 67. Cobalt breached this agreement by suing Switch in this case for claims that Cobalt
21 agreed to waive and release.

22 68. Cobalt's intent to circumvent the terms of the Settlement Agreement is further
23 demonstrated by Cobalt's efforts to seek discovery during the years that preceded the Settlement
24 Agreement.

25 69. Cobalt's actions have no excuse or justification that would render them allowable
26 under the terms of the Settlement Agreement.

27 70. Switch has complied with all of its obligations under the Settlement Agreement.
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1 71. As a result of Cobalt's conduct, Switch has suffered substantial injuries to its
2 business and property in an amount to be proven at trial. These injuries were a foreseeable
3 consequence of Cobalt's breach of contract.

4 **SECOND CLAIM FOR RELIEF**
5 **Abuse of Process**

6 72. Switch repeats and realleges each and every allegation contained in paragraphs 1
7 through this number of the counterclaim with the same force and effect as if set forth herein.

8 73. In bringing its lawsuit against Switch, Cobalt acted with an ulterior purpose other
9 than resolving a dispute.

10 74. Namely, on information and belief, Cobalt acted in an attempt to secure a nuisance
11 settlement from Switch by bringing its lawsuit just as Switch undertook its IPO, at just the point
12 when such a lawsuit would do the most damage.

13 75. Upon information and belief, Cobalt also brought this lawsuit for the following
14 improper and ulterior purposes:

- 15 a. To gain access to trade secrets, confidential business strategy, and other valuable
16 assets and property of Switch that Cobalt (or its owners) hopes to use to harm
17 Switch in future endeavors.
- 18 b. To cause discord between Switch and its many vendors and customers.
- 19 c. To use the litigation privilege to shield libelous, defamatory, and disparaging
20 statements.
- 21 d. To escape the terms of the Settlement Agreement that Cobalt agreed to.
- 22 e. To punish Switch with incredibly expensive and burdensome discovery that has
23 little to do with the merits of the litigation. And given Cobalt's bankruptcy, Switch
24 has little chance of recouping its costs even if it prevails on all claims.
- 25 f. To satiate John Ritter's creditors in his personal bankruptcy with false claims that
26 they would be the recipients of a quick nuisance settlement with Switch.

27 76. Cobalt undertook these actions willfully.
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1 77. As a result of Cobalt's conduct, Switch has suffered substantial injuries to its
2 business and property in an amount to be proven at trial. These injuries were a foreseeable
3 consequence of Cobalt's actions.

4 **THIRD CLAIM FOR RELIEF**
5 **Intentional Interference with Prospective Economic Advantage**

6 78. Switch repeats and realleges each and every allegation contained in paragraphs 1
7 through this number of the counterclaim with the same force and effect as if set forth herein.

8 79. As a result of Switch's then-upcoming IPO, a prospective contractual relationship
9 existed between Switch and any number of potential investors in Switch.

10 80. Cobalt, due to its position in the market, was aware of these potential contractual
11 relationships.

12 81. On information and belief, Cobalt intended to harm Switch by bringing its lawsuit.
13 Cobalt intended to secure a nuisance settlement from Switch, hoping that Switch would want to
14 minimize additional damage that would result from an ongoing lawsuit.

15 82. Cobalt had no privilege or justification for its interference with Switch's potential
16 economic advantage.

17 83. As a result of Cobalt's conduct, Switch has suffered substantial injuries to its
18 business and property in an amount to be proven at trial. These injuries were a foreseeable
19 consequence of Cobalt's interference.

20 **FOURTH CLAIM FOR RELIEF**
21 **Declaratory Relief**

22 84. Switch repeats and realleges each and every allegation contained in paragraphs 1
23 through this number of the counterclaim with the same force and effect as if set forth herein.

24 85. A controversy exists between Switch and Cobalt that is ripe for adjudication
25 regarding the scope of the relevant market in which the parties compete.

26 86. Cobalt argues that a "Las Vegas market" exists for colocation data centers that is
27 limited to the Las Vegas Metropolitan area.
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CERTIFICATE OF SERVICE

Pursuant to FED. R. CIV. P. 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 12th day of October, 2018 I caused the above and foregoing document entitled **SWITCH, LTD'S ANSWER TO PLAINTIFF'S COMPLAINT, AND COUNTERCLAIM AGAINST V5 TECHNOLOGIES, LLC** to be served as follows by personally transmitting a copy of same via the Court's CM/ECF Internet system to their respective registered email site.

/s/Danielle Kelley

An employee of
HUTCHISON & STEFFEN, PLLC